Affirmed — John Davis =
Judge Olney
Decree —

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~454.~~ 214

THE STEAMER COMMERCE, WILSON WALKER, MASTER AND CLAIMANT, APPELLANT,

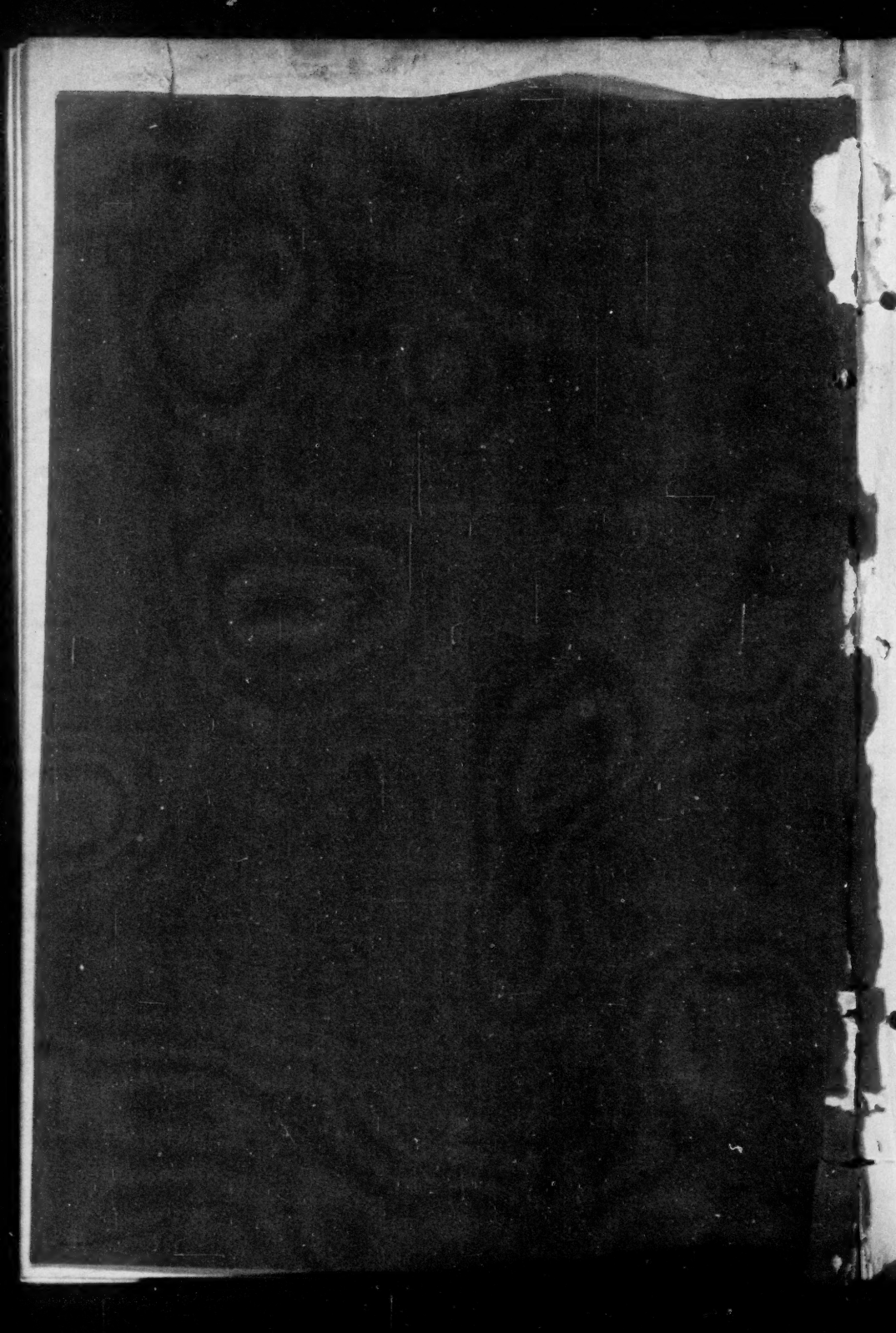
vs.

JOHN A. M. WOODLAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

FILED DECEMBER 1, 1871.

Dec. 2. 1872



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1 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a circuit court of the United States for the fourth circuit, in and for the Maryland district, begun and held at the United States court-house in the city of Baltimore, on the first Monday in November, (being the seventh day of the same month,) in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable Hugh L. Bond, circuit judge for the circuit; Archibald Sterling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—

Among other were the following proceedings, to wit:

OWNER AND CLAIMANTS OF THE STEAMER Commerce, appellant,
vs.
JOHN A. M. WOODLAND, APPELLEE.

Be it remembered that, heretofore, to wit, on the 15th day of April, in the year of our Lord 1870, the said owner and claimants of the steamer Commerce, by William Sheppard Bryan, esquire, their proctor, filed in the circuit court here the transcript of a record from the district court
2 of the United States in and for the Maryland district, in the words and of the tenor following, to wit:

TRANSCRIPT.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

At a district court of the United States in and for the Maryland district, begun and held at the United States court-house, in the city of Baltimore, on the first Tuesday in March, (being the first day of the same month,) in the year of our Lord one thousand eight hundred and seventy—

Present, the Honorable William F. Giles, judge Maryland district; Archibald Stirling, esquire, attorney; Edward Y. Goldsborough, esquire, marshal; James W. Chew, clerk—

Among others were the following proceedings, to wit:

JOHN A. M. WOODLAND
vs.
STEAMER COMMERCE. } Libel. Filed 26 Jan'y, 1870.

Libel.

3 To the Hon. William F. Giles, district judge of the United States, in and for the Maryland district:

The libel and complaint of John A. M. Woodland, of Dorchester County, State of Maryland, alleges and articulately propounds as follows:

(1.) Firstly. That, at the time of the collision and damage hereinafter mentioned, and for several years before, your libellant was, and still is the sole owner of the schooner "Seaman," a vessel of the burthen of twenty-four tons or thereabouts, of and belonging to the port of "Crisfield," and duly e'rolled and licensed for the coasting trade, and used

and employed in the business of commerce and navigation between ports and places in different States and Territories of the United States. That your said libellant was one-third owner of the cargo of oysters on board said schooner hereinafter mentioned, and that Ransom Bramble and John T. Matthews were the respective owners of the other two-thirds; and that your libellant is their agent in this behalf.

(2.) Secondly. That the said schooner, being tight, staunch, properly manned and provided in all respects for the intended voyage, and being laden with a valuable cargo of oysters, hereinafter described, left the lower part of the Chesapeake, Bay on or about the eighteenth day
4 of January, eighteen hundred and seventy, destined for the port of Baltimore, and proceeded up the bay in her course until nearly opposite Annapolis Roads. That while the said schooner was thus proceeding up the Chesapeake Bay about the middle of the same, in a due north course, she discovered the steamer Commerce, about 10 o'clock p. m. on the nineteenth day of Jannary, 1870, about two miles off, proceeding down the said bay in the prosecution of her voyage from the port of Baltimore to the port of Norfolk. That said steamer was proceeding in a direction opposite the said schooner, and in a course parallel, or nearly so, to that of said schooner. That the sky was clear, and the moon shining, and a perfect calm prevailing; so much so that it would have been impossible for said schooner to have avoided said steamer by and effort on her part, and in fact no effort was made. That said steamer, instead of changing her course and taking precautions to avoid said schooner, proceeded directly down upon her on her port side forward the fore-riggins and cut the said schooner into the foremast. That, as soon as said schooner was released from said steamer she immedately sunk in more than seventy feet water, and she and her entire cargo and furniture became a total loss.

5 (3.) Thirdly. That said schooner, at the time of said collision, was well manned, had the proper lookout, and had the requisite lights properly placed; that there was no proper lookout on said steamer; that, by the observance of ordinary care, she could have avoided the said schooner, but failed to do so, and that said collision was occasioned solely by the negligence of those on board said steamer.

(4.) Fourthly. That the damage occasioned by the collision was large. That the said schooner was worth $3,500. That the sum of $400 in cash, belonging to your libellant, and the entire cargo of oysters, belonging, respectively, one-third to your libellant, one-third to the said Ransom Bramble, and one-third to the said John T. Matthews, consisting of nine hundred and fifty bushels work $1,000, and the clothes of the crew and furniture of the boat worth $100, became a total loss.

(5.) Fifthly. That the said premises are true, as hereinbefore propounded.

(6.) Sixthly. That the said steamer is now lying at her wharf in the city of Baltimore within the admiralty jurisdiction of this honorable court.

Wherefore the libellant prays that process in due form of law
6 may issue against the said steamer Commerce, her engines, machinery, boats, tackle, apparel and furniture; and that this honorable court will pronounce for the damages aforesaid and costs, and grant such other and further relief in the premises as to justice and right may appertain, &c.

W. S. WATERS,
Proctor for Libellant.

Attachment.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To the marshal for the Maryland district, greeting:

We command you that you attach, seize, take, and safely keep steamer Commerce, her engines, machinery, boats, tackle, apparel, and furniture, to answer the libel of John A. M. Woodland, of Dorchester County, in a cause of collision, civil and maritime, and how you shall execute this precept you make known to us in our district court for the district aforesaid, at the United States court-room in the city of Baltimore, on the first Tuesday of March next, and have you then and there this writ.

Witness the Honorable William F. Giles, judge of our said dis-
7 trict court, this first Tuesday of December, in the year of our Lord one thousand eight hundred and sixty-nine.

Issued 26th day of January, 1870.

[SEAL.] JAMES W. CHEW,
Clerk Dis't Court.

Marshal's return.

Atta'd Feb'y. Released by stip. March 1st, 1870.
E. Y. GOLDSBOROUGH,
U. S. Marshal.

Stipulation.—Filed March 1st, 1870.

THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

Be it remembered that, on this first day of March, in the year of our Lord one thousand eight hundred and seventy, before me, Rob't Lyon Rogers, a commissioner appointed by the circuit court of the United States for the fourth circuit, in and for the Maryland district, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the United States," appear Wilson Walker and James S. Whedbee, 107 South street, in the
8 city of Baltimore, of the district aforesaid, in their proper persons, and submit themselves to the jurisdiction of the district court of the United States for the district of Maryland, and consent to bind themselves, and do acknowledge themselves, their heirs, executors, and administrators to be bound in the sum of ten thousand dollars for the claimants of the steamer Commerce unto John A. M. Woodland, of Dorchester County, Maryland, to perform and fulfil the final order and decree of the said district court; and, in case of an appeal from such final order and decree of said district court, then the final order and decree of the circuit court of the United States for the fourth circuit, in and for the Maryland district; and, in case of an appeal from such final order and decree of the said circuit court, then the final order and decree of the Supreme Court of the United States in a certain cause now depending in the said district court, wherein the said John A. M. Woodland is libellant and the claimants of the said steamer Commerce are respondents; and, unless they so do, they severally consent that execution shall issue against them, their heirs, executors, and administrators, their goods, chattels, lands, and tenements wheresoever found or to be found. Acknowledged before—

ROB'T LYON ROGERS,
U. S. Commissioner.

9 *Claim.—Filed March 1st, 1870.*

Wilson Walker, master of the steamer Commerce, and part owner thereof, claims the same on behalf of himself and the other owners, and says that he is master of the said steamer and lawful bailee thereof, and that he and D. D. Simmons and Brother, of Norfolk, Whedbee & Dickenson, of Baltimore, and David M. Carter, of Washington, North Carolina, are the owners of the said steamer, and that no one else is owner thereof.

W. WALKER.

W. S. BRYAN,
Proctor for Claimant.

Subscribed and sworn to before me this 1st March, A. D. 1870.
ROB'T LYON ROGERS,
U. S. Commissioner.

Answer.—Filed March 21st, 1870.

In admiralty.

The answer of Wilson Walker, master of the steamer Commerce, and claimant of the same, in behalf of himself and others, the owners thereof, to the libel of John A. M. Woodland.

This respondent, for answer to the said libel, doth say as follows:

10 First. That he is the owner of twenty-five eightieths of the steamer Commerce; that James S. Whedbee, and John S. Dickenson, together, own twenty-five eightieths; and the firm of D. D. Simmons & Brother, of Norfolk, of which D. D. Simmons is the sole member, owns twenty-five eightieths; and David M. Carter, of Washington, North Carolina, owns five eightieths, and no other person owns any interest in the said steamer. And this respondent is the master thereof and has the lawful possession of it for the owners whom he represents in this behalf.

Second. That he knows nothing of the matters mentioned in the first article of the libel, and he requires the same to be proved.

Third. That he does not know whether the schooner Seaman was tight, staunch, and properly manned and provided, or not; and he knows nothing about the value of the said schooner, or her cargo, or of her furniture, or of the money and clothing on board of her at the time of the collision, and he requires the averments of the libel in this behalf to be proved.

Fourth. That the steamer Commerce, under the command of the respondent as master, properly equipped and manned with a sufficient and skilful crew, at night, in January last, was proceeding down the

11 Chesapeake Bay, at the rate of six or seven miles an hour, holding a course south-by-west; that she discovered a sailing vessel approaching from the opposite direction, holding a course, as near as he could judge, of north-by-east; that a light wind from the southeast was prevailing of about two knots an hour, or perhaps more; that this respondent, when the schooner was about a mile distant, altered the course of the steamer to south-by-east; that he continued this last-mentioned course and the schooner continued her original course until the vessels were within about four hundred yards of each other, when the schooner

changed her course so as to cross the bow of the steamer; that this respondent then caused the engines to be stopped and reversed, and that about five minutes, as near as this respondent can judge, after the engines were reversed, the collision took place with the sailing vessel.

Fifth. That if the schooner had not altered her course the collision would not have taken place; and that the said collision was caused exclusively by the fault of those having charge of the navigation of the said schooner, and that the steamer on the occasion was properly and skilfully managed.

12 Sixth. That the steamer had the proper lights, and had a good and vigilant lookout.

Seventh. That a fog had been prevailing earlier in the evening, which had been gradually disappearing, and before the time of the collision the lights could be distinctly seen; that the moon was shining, but not very bright; that the collision took place about ten o'clock at night.

Eighth. That after the collision took place this respondent sent a boat to the assistance of the crew of the schooner, and tendered them all the aid in his power to extend.

Ninth. That shortly after the collision the schooner sunk, as this respondent believes.

Tenth. That this respondent has heard that the said schooner is the one mentioned in the libel, and he has no reason to doubt the fact.

Eleventh. That the premises are true.

Wherefore this respondent prays that the libel may be dismissed with costs.

W. WALKER.

W. S. BRYAN,
Proctor for Respondent.

STATE OF MARYLAND,
City of Baltimore, sct:

Before me, the subscriber, a justice of the peace of the State of Maryland, in and for the city of Baltimore, personally appeared
13 the above-named Wilson Walker, and makes oath that the foregoing answer is true.

March 2nd, 1871.

GEO. McCAFFRAY, *J. P.*

Petition.

District court U. States, district of Maryland.

WOODLAND
vs.
THE STEAMER COMMERCE.

To the hon. the judge of the district court of the United States for the district of Maryland:

The petition of Ranson Bramble, John T. Matthews, John Woodland, and Jerry Slocum, in the above case, respectfully represents:

That your petitioner, Bramble, is entitled to one-third of the oysters, the $400 in money; one worth $25; one watch, $35; and clothes, worth $60, in said libel named. Your petitioner, John T. Matthews, is entitled to one-third of the oysters in said libel named. Your petitioner, Woodland, is entitled to some of the clothes named in said libel; and

your petitioner, Jerry Slocum, is entitled to some of the clothes named in said libel. And they pray that the value of the said articles belonging to them may be awarded in this case to them directly, or to the libellant, for them; and, as in duty bound, &c.

14 W'M S. WATERS,
Proctor for Petitioners.

(Endorsed:)

It is agreed that this petition be considered as filed at the time of filing this libel.

W. S. BRYAN, *for Resp't.*
W. S. WATERS, *for Pet'rs.*

Deposition of Jesse Thurlow, a witness for libellant, taken before Isaac Brooks, jr., a commissioner of the United States, at his office in Baltimore, on the 21st March, 1870.

JESSE THURLOW, being first carefully examined and cautioned, and duly sworn, and examined on behalf of the libellant, makes oath, deposeth, and saith as follows, to wit:

Where do you reside?

I reside at 239 S. Baltimore st.

What is your occupation?

I keep a boarding-house.

Did you witness a collision between the steamer Commerce and sch'r Seaman? If so, state when and where, and all the circumstances connected with it.

I did. It occurred abreast of Annapolis, middle of the Chesapeake Bay, about ten o'clock p. m., about the 20th January. I was
15 two or three hundred yards westward of the collision, on the yacht Maria. I saw the steamer run into the Seaman. I heard the captain of Seaman holloa for the steamer to keep away from him. I saw the two boats about five minutes before the collision, and up to the time of the collision. The steamer being a low-pressure boat, I was unable to tell whether she slackened her speed or not. From my observation, I should think not. I should think she did not change her course from the time I saw her until the collision. The schooner did not change her course from the time I first saw her until the collision. She was keeping her proper course up the bay. As soon as I heard the collision, I halload to the pilot of the barque to let go my line, and I would try to rescue them. As soon as he let go the line, I jumped into the small boat, and pulled for the accident. When I got there, the captain and his men were on board a steamboat. The captain was talking about taking them to North Carolina. I told them to come along with me, and I would take them to Annapolis or Baltimore, or wherever they wanted to go. They got on board of my boat, and I carried them
16 to Annapolis. The schooner sunk immediately, and could not be found. It was in the deepest place in the bay. There was not a particle of wind at the time, that I could judge. There was not a ripple upon the water.

Cross-examined:

I keep a seaman's boarding-house. I have a sloop. I was down seeking boarders. The steamer, when I first saw her, was bearing about northeast from me. She was steering, I should judge, east-southeast.

The schooner bore about east from me. She was running north-north-east. I should judge I was from two to three hundred yards from the collision. I had command of the sloop. A boy and man were in the sloop beside me. The boy was steering, and I was on the look-out. The boy's name is August Grafes. The man's name is Hermage Williams. He has gone to sea in the brig Mettie Mowe. I was being towed by a barque, and the barque was towed by the steamboat Corrinne, Capt. Anderson. The barque was an Italian barque. I don't know the name. I should judge Thomas' Point bore about west-southwest from us. I should judge Sandy Point bore about north from me. I had observed the schooner before the collision, about ten minutes. I saw her
17 before I saw the steamer. The night was not very clear nor very thick. You could see a vessel's lights a mile and a half. You could see a vessel about a mile. The schooner that was run down had a crew of two white men and one colored. I did not go on board the steamer. I was alongside of the steamer. The tide was running out strongly—about three knots.

Sworn to before me.

ISAAC BROOKS, JR.,
U. S. Com'r.

Deposition of Wilson Walker, a witness for respondents, taken before Robert Lyon Rogers, United States commissioner for Maryland district., March, 1870, in Baltimore City.

I was, and am now, captain of the steamer Commerce, and have been since April, 1869. The Commerce is a propeller, with a stern wheel. She is two hundred and twenty-two tons burden. We left the port of Baltimore for ports in North Carolina about the 19th of January, 1870. We had a general assortment of merchandise, consisting of flour, sugar, &c., and we had a full load. On the 19th day of January, we proceeded down the bay to Sandy Point, and after passing the point, we saw a couple of lights—a green one and a red one. After getting within one or two miles of them, as I should judge, our course up to the time having been south-by-west, we altered our course to south-by-east. This course shut in the light by the port-bow of the sailing-ves-
18 sel. By this, I mean that we could not see the red light of the sailing vessel in consequence of our change of course. We continued our course south-by-east, and all at once it seemed the sailing vessel altered her course more to the eastward and showed her red lights. At that time, I ordered the boat stopped and the engine reversed and backed. A minute or two elapsed before the engine could pass the centre and back, in consequence of the headway and weight of the boat. Finally the engine was reversed and commenced backing, but the boat still forged ahead. We think the engine was backing at least five minutes before the collision took place. All this time the boat was keeping some of her headway. A collision took place with a schooner, and the schooner was struck on the port-bow near the forward rigging. The schooner when we first saw her was heading north-by-east, and when she showed her red lights and changed her course, she headed about east-by-north or east-northeast, and was about five hundred yards distant. The steamer, when the collision took place, was heading south-by-east. I was on the hurricane-deck, on the starboard side, when the schooner's lights were first seen, and James Brabble was at the wheel, who was the regular wheelsman of the steamer. He was in the pilot-

house. If the schooner had not altered her course, the collision would not have taken place. William Gray was also a lookout on the
19 steamer, and his station was on the forward part of the hurricane-deck, and was placed there as a lookout having no other duty to attend to. I was on the starboard side of the pilot-house, and around in front of it on the hurricane-deck, during the whole time from the discovery of the lights of the sailing-vessel until the collision took place. I gave all the orders that were given, such as changing the course, backing the boat, and so forth. The wind was about southeast, and, as near as I can judge, was about a two-knot breeze. The moon was shining, but not very brightly. We saw the lights of the schooner distinctly. When we first saw the schooner, I think we were making some six or seven knots. I was paying particular attention to the navigation of my vessel and to the approaching sch'r. The floor of the hurricane-deck is about seven feet above the floor of the main-deck. The bulwarks of the steamer rise as they go to the bow, and are about four feet at the stem above the main-deck. A person standing on the main-deck, just in front of the pilot-house, would not have such view, as he would have on the hurricane-deck, and this would be because of bulwarks rising forward as they approached the stem. On the hurricane-deck, the view would be unobstructed, except a derrick, or mast forward of about twelve inches in diameter. This would not obstruct the view of a person on the hurricane-deck.
20 It is used for the handling freight exclusively, and has no sails or rigging of any sort, except the falls and the halliards for hoisting the white light. The best position for a person to see objects is on the hurricane-deck forward of the pilot-house. A person standing on the hurricane-deck, in front of the pilot-house, could see the water within twenty feet of the bow right ahead. We had a green light on the starboard side, burning bright and in good order. We had side-screens on each side of the boat. The red light was on the port side; the white light was hoisted to the mast or derrick forward, twenty feet above the deck. All the lights were in good order and burning bright. Each side-light had a side-screen. I have known William Gray, who was the lookout on the night of the collision, and who was forward on the hurricane-deck, for about three years. He is at present in Currituck County, in the State of North Carolina. I endeavored to get him on here, but I did not succeed. I think I will be able to bring him here on this trial. William Gray is an intelligent man, and a reliable, and attentive man to his duties.

Being cross-examined by the proctor for libellants, the witness deposes and says as follows:

The hurricane-deck extends about two feet in front of the pilot-house, and this was the place where Gray was standing. I should think the pilot-house was from twenty to twenty-five from the stem of
21 the vessel. The lookout saw the schooner's lights first and reported it to me. At this time the schooner was right ahead of us. When I changed my course, as I have before said, the schooner was right ahead of us. We then starboarded our helm, and took the course as before stated. As a general thing, I kept my eye on the schooner from the time I changed my course until I was within five hundred yards of her. My eye was sometimes off of her. As soon as saw the red light of the schooner, ordered the boat backed, and keep the wheel starboard to endeavor to pass to the eastward of her. The fact that my engine did not pass the centre, was not because of any special defect in my engine, but it is the case with the engines of propellers generally under such circumstances as I have described.

I think a propeller is more difficult to slow than a side-wheel steamer. We struck the schooner on her port bow, and I think it was nearly at a right angle that we struck her; but I cannot speak with certainty.

Re-examined by proctor for respondents:

I have been over thirty years a seafaring man. I have had command of vessels some twenty-five years, and this service has been on the Chesapeake Bay and at sea, and I have been on the Chesapeake Bay
22 ever since 1848, except during the war. The engines of the steamer Commerce were in good order on the occasion of this collision. When the engines of the steamer, a propeller, are reversed, we cannot change her course, but she simply has to back, but, in backing her stern would naturally incline to the port side. I was paying strict attention to the sch'r from the time her lights were reported to me up to the time of the collision. I endeavored to avoid the accident by every power that I could command. When the collision took place, I sent my boat to the relief of the schooner. My boat met their boat, and they all came on board the steamer in their boat. I told the captain that I would take him to Annapolis or Norfolk, but the captain preferred to go in another boat, and left the steamer in his own boat. I only saw three of the crew of the schooner. Two came aboard in their boat, and one got aboard at the time of the collision. The captain of the schooner asked me the name of my steamer, and I told him the name and where she was bound.

WILSON WALKER.

This deposition is to be admitted in evidence as if properly certified, and it is admitted that the witness, Wilson Walker, testified that he is and was a licensed pilot, and that, at the time of the collision,
23 the Commerce was bound on a voyage from Baltimore to Norfolk and through the canal to ports in North Carolina.

W'M S. WATERS,
Proctor for Lib'l'ts.
W. S. BRYAN,
Proctor for Resp't.

Deposition of James Brabble, a witness on part of the respondent, taken before Robert Lyon Rogers, U. S. commissioner.

I was helmsman on the steamer Commerce, or wheelsman on the steamer, and had been some three or four months. I have been a seafaring man for fifteen years. I have been most of this time in the Chesapeake Bay. When I first saw the lights I saw two lights, red and green. We were then heading south-by-west. The lights were right ahead of us. I kept this course until we were within a mile, I should judge, of the schooner—I think about a mile from her. I was then ordered by the captain to steer south-by-east, and I did so. The compass was on the starboard side the wheel, just where I stood, and I saw by the compass that we were heading south-by-east. I kept her on that course, and shut the red light of the schooner in. We kept on this course until we were about five hundred yards of the schooner, when she threw her red light on us again, and we saw both lights.
24 The captain then gave me orders to stop the boat, and to back her. I rung the bells to stop her and to back her. The bell-pulls are on each side of the wheel, and the bells are in the engine-room. We give two pulls to stop the engine and two more to reverse the engine. I think the schooner was heading east-by-north when I rang the bell to

stop the steamer. The engine of the steamer was backing, but her headway continued. The schooner was struck on her port side, forward of the fore rigging. Our captain sent out his boat to the assistance of the schooner, and met their boat, and both boats returned to the steamer. Our captain asked the captain of the schooner what he should do for him, and told him that he would take him to Annapolis or to Norfolk, but the captain preferred to go off in a boat which took him off. The captain of the schooner asked Captain Walker the name of the steamer, and he told him the name, and told him where she was bound. William Gray was the lookout on board the steamer. His position was on the hurricane-deck, in front of the pilot house; he was a careful and intelligent man, and kept a good lookout; he had no other duty to do than to keep a good lookout. I think he was a competent lookout. The floor of the main-deck forward was about three feet above the water-line; the floor of the hurricane-deck was about seven feet above
25 the main deck. A lookout would have a better view from the hurricane-deck than from any other part of the steamer. The bulwarks rise as you go to the stem of the vessel, and at the stem are about four feet above the floor of the main deck. The hurricane deck extends about two feet in front of the pilot-house; the pilot-house is where the wheel is and where I stood. The mast or derrick is about four or five feet directly in front of the pilot-house. The steamer had all the proper lights, and they were all in proper condition and burning bright.

his
JAMES + BRABBLE.
mark.

This deposition is to be admitted in evidence as if properly certified.

W'M S. WATERS,
Proctor for Lib'lts.
W. S. BRYAN,
Proctor for Resp'ts.

Deposition of David Hardester, jr., on part of respondent, taken before Robert Lyon Rogers, esquire, U. S. commissioner.

I was engineer of the steamer Commerce, and have been engineer for about four months on her. I have been engineer on steamboats about fourteen years. In January last the crew of the steamer Com-
26 merce consisted of the captain, the mate, named Williams, the hel'sman, the lookout, and a fireman and cook, and myself. I was at my post in the engine-room, and at the time of this collision, I heard one bell, to stop her, and I stopped her; and then I heard another bell, and this bell was part of the signal to stop her; but I had stopped her before the second bell rung. After that they rung one bell, and I backed her as quick as possible, and, by the time the engine commenced moving on the top-centre, there was another bell rung. We generally commence obeying the signal as soon as we hear the first bell, without waiting for the second. It was, I suppose, a little over a minute before I got the engine to run back. In consequence of the headway of the boat we can't reverse the engines immediately, because the crank-pin will come up to the centre, and won't pass over. This is the case with all propellers. I heard the crash of the collision four or five minutes after I reversed the engines, and, during this time, she was forging ahead. Our engines were in good order; they had been overhauled

that very day. The steamer was making six or seven knots, and I think so, because she was carrying between twenty-two and twenty-three pounds to the square inch. We have a steam-gauge in the engine-room that shows the amount of steam carried. She is licensed
27 to carry thirty-five pounds of steam, and, carrying thirty-five pounds of steam, she can average between eight and nine knots an hour. When I heard the first bell to reverse the engine, I threw the starting-bar down at once, and the crank came up on the centre, and would not pass, and this was caused by the headway of the boat. The tendency of the headway of the boat is to produce that result. The crank-pin came up twice, and the third time it passed, and the engines commenced backing. This did not stop the forward motion of the boat, but it continued—it was diminished a little, but not much.

DAVID HARDESTER, JR.

This deposition is to be admitted in evidence as if properly certified.

W'M S. WATERS,
Proctor for Lib'Vts.
W. S. BRYAN,
Proctor for Resp'ts.

Agreement.

In the district court of U. States for Maryland.

WOODLAND
vs.
THE STEAMER COMMERCE, WALKER, CLAIMANT.

It is agreed that William Gray would have testified to the same
28 facts in reference to the collision, and the circumstances attending it, as were testified to by Wilson Walker, and is to be taken and considered as if he had been examined before the commissioner, and given such testimony.

W'M S. WATERS,
Proctor for Lib'Vts.
W. S. BRYAN,
Proctor for Resp'ts.

Decree.

In the district court of the United States for the district of Maryland.

WOODLAND
vs.
STEAMER COMMERCE.

This cause standing ready for hearing, the evidence of libellant and respondent having been heard and considered, it is thereupon this fifth day of April, in the year 1870, by the district court aforesaid, ordered, adjudged, and decreed: James S. Whedbee and Wilson Walker stipulators for the steamer Commerce, within twenty days from the date of this decree, pay to the libellant, on his own account, the sum of two thousand five hundred dollars, the value of the vessel lost by the collision in the proceedings mentioned, and for as much as by petition

in this cause filed, Ranson Bramble, John T. Matthews, John
29 Woodland, and Jerry Slocum have asked that the amount of their damage, on account of said collision, should be paid to said libellant for their use in full discharge of their claims.

It is further ordered, adjudged, and decreed that the said stipulators pay, within twenty days aforesaid, to the said libellant', Ransom Bramble and John T. Matthews, the sum of three hundred and eighty dollars, the value of the oysters lost by collision; and to the said libellant, for the use of Ransom Bramble, the sum of five hundred dollars, for money and other articles belonging to said Bramble, and lost by said collision; and to said libellant, for the use of John Woodland, the sum of fifty dollars, for clothes of said John Woodland lost by said collision; and to said libellant, for the use of Jerry Slocum, the sum of thirty dollars, for clothes of Jerry Slocum lost by said collision.

And it is further adjudged, ordered, and decreed that this decree shall bear interest on all said sums of money from the date hereof, and the said stipulators shall pay *shall pay* to the said libellant the costs of this suit.

WILLIAM F. GILES.

From which said decree, so as aforesaid passed, the said claimant of the said steamer Commerce, and the said stipulators, by their
30 proctor aforesaid, in open court here, have prayed an appeal to the circuit court of the United States for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November next, and to them it is granted.

Thereupon it is ordered by the court here that the record and proceedings aforesaid, with all things relating to the same, be transmitted to said circuit court; and the same is transmitted accordingly.

Appeal bond.—Filed April 8th, 1870.

Know all men by these presents that we, James S. Whedbee and John S. Dickinson, of the city of Baltimore, State of Maryland, are held and firmly bound unto John A. M. Woodland, in the just and full sum of seven thousand dollars, to be paid to the said John A. M. Woodland, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us, and our heirs, executors, and administrators, and each of them, firmly by these presents, sealed with our seals this eighth day of April, anno Domini eighteen hundred and seventy.

Whereas at a district court of the United States in and for the Maryland district, in a cause of collision instituted in said court by the
31 said John A. M. Woodland against the steamer Commerce, it was so proceeded that the said steamer was released from the custody of the marshal on the stipulation of Wilson Walker and James S. Whedbee; and, on the fifth day of April, anno Domini eighteen hundred and seventy, it was decreed by said court that the said stipulators, Wilson Walker and James S. Whedbee, should pay to the said John A. M. Woodland three thousand four hundred and sixty dollars, for his own use, and for the use of the other persons mentioned in the said decree, in the sums therein mentioned. And whereas Wilson Walker, claimant of the said steamer, in behalf of himself and the other owners, has prayed an appeal to the next circuit court of the United States for the fourth circuit in and for the Maryland district:

Now, the condition of this obligation is such, that if the said claimant

shall well and truly prosecute his said appeal with effect, and the said Wilson Walker and James S. Whedbee shall pay all such damages, costs, and expenses as may be decreed against them by the said circuit court of the United States on said appeal, then this obligation to be void; otherwise to be and remain in full force and effect.

JA'S S. WHEDBEE. [SEAL.]
JNO. S. DICKINSON. [SEAL.]

32 Signed and sealed in presence of—
GASTON MANLEY.

James S. Whedbee and John S. Dickinson, each made oath before me that they are worth more than the penalty of the within bond, after the payment of all their just debts.
April 8th, 1870.

D. HAGERTY, *J. P.*

(Endorsed:)

"Bond approved.

"WILLIAM F. GILES.

"8 APRIL, 1870."

In testimony that the aforegoing is a true copy, taken from the record and proceedings of the district court aforesaid, I have hereunto subscribed my name and affixed the seal of said district court this 15th day of April, in the year of our Lord 1870.

[SEAL.] JAMES W. CHEW,
Clerk District Court.

Deposition of John W. Woodland, a witness for the appellee, taken before Isaac Brooks, jr., at Baltimore, 7th of April, 1870.

33 I knew the schooner Seaman. John A. M. Woodland owned her. On the 20th of January last we were bound (the Seaman) up the Bay. I was on the Seaman. I was captain of her. Ransom Bramble was mate and pilot. Jerry Slocum was steward. She was loaded with oysters. We were going to Baltimore from the Patuxent River. The steamer Commerce run into us, near ten o'clock, abreast of Annapolis. I saw the steamer Commerce. I suppose she was a mile and a half to two miles off. She never altered her course from the time I saw her. Capt. Bramble hollowed at her when she was a half a mile off. He told them that they would run into us if they did not alter their course. We were becalmed and could not get out of her way. At the time I first saw the steamer I had my hand on the tiller. I was not steering her as she was uncontrolable on *on* account of the calm. There was no wind—there was a slight air. Capt. Bramble was forward. He was looking out. We did not alter our course after we saw the steamer. The steamer ran into us forward of the forward chain-plate and sunk us. We sank in from two to three minutes after she struck us. I do not know the depth of the water in which we sunk. We were a little over to the eastward side of the bay. The vessel sunk and we got into our yawl-boat and went on board of the steamer Commerce. Mr.
34 Thurlow, capt. of a sloop, came on board and took on board of his boat and took us to Annapolis. Our oysters were lost and all my clothes, and all the clothes and things that were on board were lost. Some

money was lost—it was Mr. Bramble's. I don't know how much it was. I saw it on board. I did not count it. I saw him when he put it in my cupboard in the cabin. My clothes were worth about sixty dollars. We had both lights up and burning.

Cross-examined:

The boat of the Commerce was coming round the bow of the steamer as we were going to the steamer. Mr. Thurlow's sloop was behind a barque, and the barque was behind a tug, which had her in tow. The tug did not go to Annapolis. I had my right-hand on the tiller at the time of the collision, to the best of my knowledge. Capt. Bramble was forward and called my attention to the steamer, and said that she would be into us from the way she was coming. I can't say how long that was before the collision. I then watched the steamer until the time of the collision. Our sails were amidships, swinging in board. We had come from Black-walnut Grove that day. We left early in the morning. I am in my twentieth year. I had command of the
35 Seaman from October, 1869. I never commanded a schooner before. Ransom Bramble assisted me in commanding the sch'r. He had the control of carrying her. He was pilot. Bramble directed the courses the vessel should take. I never sailed on board a boat until last October. We had a compass on board. The compass was in the binnacle-box on the trunk. It was about two feet from where I was at that time. It was from eighteen inches to two feet from the floor of the deck. We were heading about a north course at the time of the collision. Jerry Slocum, when I first saw the steamer, was in the cabin, I think. He had just gone down there. He helped to look out and trim the sails, and was steward. I cannot state how he was employed during the two hours before the collision, except that he was attending to the cabin and the provisions. I don't know how old the Seaman was. I don't know the length of her keel. I don't know her breadth. I don't know how many tons burthen she was. We lost the papers. I don't know what her dead rise was. I don't know what direction the steamboat was from us when I first saw her.

JOHN W. WOODLAND.

Subscribed and sworn to before me this 7th day of April, 1870.

ISAAC BROOKS, JR.,
U. S. Commissioner.

36 *Deposition of John A. M. Woodland, a witness for the appellee, taken before Isaac Brooks, jr., U. S. commissioner, at the city of Baltimore, on the 14th day of April*, 1870.

I am the libellant in this case—now appellee. I reside in Dorchester County, Maryland. I owned the schooner Seaman, mentioned in this case. I owned one-third interest in the oysters on board of her. I should consider the Seaman, at the time she was lost, was worth at least three thousand dollars. I claimed thirty-five hundred dollars, because I thought boats at that season of the year, were worth more than at other seasons. I bought the sch'r of Capt. W'm Todd, I think, the 15th day of September, 1869. I paid two thousand dollars for the boat. Since that time I have put nine hundred and thirty-four dollars on her for sails and other fittings.

Cross-examined:

I don't know the age of the boat. I don't recollect of hearing of the

boat but two weeks before I purchased her. I don't know the length of her keel. I can't tell the breadth of her beam in the widest part. She had a dead-rise bottom. She was not flat-bottomed. She was what we term a keel-boat. I don't know how great her dead-rise was. She was between twenty-three and twenty-five tons. I cannot tell her
37 dimensions, because her papers were lost. I live at Lake City, about forty miles from Crisfield. My business is merchandising. I was formerly a sailor. I have not been connected with navigation for some years. I followed the water up to 1842, and since then have had no connection with navigation.

JOHN A. M. WOODLAND.

Subscribed and sworn to before me this 14th day of April, 1870.

ISAAC BROOKS, J'R,
U. S. Comm'r.

Deposition of John T. Matthews, a witness for the appellee, taken before Isaac Brooks, j'r, U. S. commissioner, at the city of Baltimore, the 7th day of May, 1870.

My name is John T. Matthews. I reside in Dorchester County, Md. I follow the water, and have been a boatman for ten years past. I know the sch'r Seaman, owned by Mr. Woodland. At the time she was sunk by the collision, I would have given three thousand to thirty-five hundred dollars for her, if I had wanted a boat for myself. I made two trips to Baltimore, and sold two loads of oysters in Baltimore between the first and eighteenth of January, 1870. I got my oysters from the Patuxent. The' were dredged oysters in the Patuxent. For the
38 first load I got fifty cents a bushel, and for the last load forty-five cents.

Cross-examined:

I sold these oysters to William Farron. I did not sell any between the 20th of Jan'y and 1st of February. I do not know how old the Seaman was lost. I think her tonnage was a little over twenty-three, registered measurement. I have seen the Seaman a couple of years before the collision, probably eight or ten times during that period. I don't know her length or breadth in the widest part; I never measured her, and I cannot form an estimate. I don't know the depth of he' hold. I don't know what kind of a bottom she has; I suppose she had a good bottom. I made two trips in her, and she did not leak any. I don't know what her dead-rise was.

JOHN T. MATTHEWS.

Subscribed and sworn to before me this 7th of May, 1870.

ISAAC BROOKS, J'R,
U. S. Comm'r.

Deposition of Ransom Bramble, a witness for the appellee, taken before Isaac Brooks, j'r, U. S. commissioner, at the city of Baltimore, on the 7th day of May, 1870.

My name is Ransom Bramble. I reside in Dorchester County,
39 Md. I am a sailor. I knew the sch'r Seaman, owned by John A. M. Woodland. I was on board of the sch'r Seaman on the 20th of January, 1870. I was acting as pilot. I was coming from the

Patuxent, and was bound to Baltimore. The crew consisted of John W. Woodland, capt., Jerry Slocum, steward, and myself. We were loaded with oysters caught in the Patuxent by dredges. There were about nine hundred and fifty bushels on board. I left the Patuxent on the 19th of January, in the morning. We were coming up the bay. I was off Annapolis. It was ten o'clock; we were becalmed. I was standing forward looking out, and I saw a steamer coming down the bay, a mile or more off, I can't tell exactly. She was steering right for me. When she was a hundred or two hundred yards off, I could not tell, I hollowed to the steamer and said they would be into me if they did not keep off. He did not alter his course but came right on and struck the Seaman on the port side, forward of the fore-rigging. I then hollowed at the captain and told him I was sinking. He made no reply, but went a good way off; I cannot say how far. The steward Jerry got on board the steamer at the time she struck. I did not see him get on. A Mr. Thurlow came to the wreck to see if I was lost, and I got into my yawl and went on board the steamer. The steamer was the
40 Commerce. Capt. Walker, of the steamer, said to me: "Where do you belong?" I told him Dorchester County, and he said "He would take me to North Carolina." The Seaman sunk a minute or two after she was struck. I made my escape in the yawl boat. I have never seen the Seaman since. I had sounded just before the collision, to try if the schooner was going back, and could find no bottom with a 12 fathom line. I was the eastward side of the Chesapeake Bay. It had been thick, but the moon raised about eight o'clock. At the time of the collision the moon was shining and it was starlight. There was no wind; it was calm. There was a strong ebb-tide. I did not change the boat's course after I saw the steamer. She would not answer her helm in consequence of the calm. She had to be kept straight with an oar. I had the regular lights—red and green—hung up in the rigging, the red light on the port side and the green on the starboard. I lost, besides the oysters on board—I lost four hundred dollars belonging to me, which was in the cabin. I lost all my clothes, worth fifty or sixty dollars. I lost a revolver worth $25; a watch worth thirty to thirty-five dollars. The oysters, one-third was owned by me, one-
41 third by John M. Woodland, and one-third by John T. Matthews. I had been getting fifty to fifty-five cents a bushel for the same quality of oysters; one time before that I got sixty cents. I never got less than fifty cents the whole time I ran. I would have given twenty-eight hundred to three thousand dollars for her. I did not want her. I had known her for upwards of two years. The summer before last she was repaired. She had all the work done to her that was wanted. She had a new transom put into her, and all her stern was new. She was timbered all that was wanted. When so repaired she was a good boat. When Mr. McGee put the sails on her, I would have given as much for her as for a new boat of her size. She had a new wear-stay on her. I sold oysters in the month of January for fifty-five cents. The steamed oyster packers buy nothing but spoiled oysters at the lowest prices.

Cross-examined:

I did not take notice Thomas' Point; it was on the port side. Sandy Point right ahead of us—north. I was steering a north course. It was calm and I had to do the best I could. She was straight and on her course. I put an oar on the quarter of her stern. I did not keep it there long. Whenever I got her straight on her course I took it
42 away. I used it some six or seven times that night. It might

have been a quarter of an hour before I saw the steamer that I used the oar the last time. No one assisted me in using it. The steamer, when I first saw her, was about northwest from me. I don't know what direction the steamer was from Sandy Point. When I first saw the steamer she might have been a mile, or she might not have been so much, off from us. Water is deceiving. Jerry Slocum was on deck when I first saw the steamer. (The witness corrects his answer and says that Jerry Slocum was in the cabin when he first saw the steamer.) I don't know what he was doing in the cabin. He had not been there long. I don't know how long. He came on deck when he heard me holloa to the captain on board the steamer. The lights were in light-boxes. After the collision I went on board the steamer. After I left the steamer I went with Mr. Thurlow in his sloop to Annapolis. When I first saw the steamer I don't know what course she was steering. I can't tell exactly how long before the steamer struck me it was that I sounded—it might have been ten or fifteen minutes. I sounded two or three times that night. I had a compass on board; it was in the binnacle, near the mainmast—aft of the mainmast. I examined the compass to see what course I was going. I kept looking at the com-
43 pass every two or three minutes when I was steering. When Capt. Woodland was steering I noticed it too. When I first espied the steamboat I went aft and looked at the compass. Capt. Woodland had been steering an hour or less before the collision. The course was not changed after Woodland commenced steering. There was nothing to change. She was laying as straight as she could be. I knew that she had not changed her course by the compass; that was the guide. I looked at the compass after Woodland commenced steering every once in a while—every two or three minutes. There was not much steering to do; if she went any way she went backward. I gave Capt. Woodland the course. I did not measure the oysters. I had had the watch I lost about two or three weeks. I gave thirty dollars for it. I bought it of Capt. John Woodland. I lost pants, drawers, shirts, vests, coat, two vests, a big gum coat. I had the four hundred dollars a right smart time. I can't tell how long. I earned it through the year. We had been working together on the boat since the fall. I can't tell exactly where it all came from. I got some from Capt. Farron. I did not have all on board the boat ever since I had it. I kept it with me from the time I got it until I lost it. I kept it so that if I got
44 caught in the ice I could pay my way out. Capt. Farron paid me the money at different times. Mr. Ketchum paid me some. I can't tell long I had the $400. I never kept an account of it. Four hundred dollars is nothing for a dredging-boat to have on board; it is a mere trifle. I don't know how old the Seaman was. I don't know the depth of her hold. I don't know her breadth in the widest part, nor her length. She was a keel-boat. I don't know what her dead-rise was.

his
RANSOM + BRAMBLE.
mark.

Subscribed and sworn to before me this 7th of May, 1870.

ISAAC BROOKS, JR.,
U. S. Comm'r.

Deposition of Robert McGee, a witness for the appellee, taken before Isaac Brooks, jr., U. S. commissioner at the city of Baltimore, on the 7th day of May, 1870.

My name is Robert McGee. I am a sail-maker in the city of Baltimore. I knew the sch'r Seaman, owned by John A. M. Woodland. I made a suit of sails for her last fall—in September—and the sails cost three hundred and ninety-six dollars and thirty cents. My knowledge of the boat is that she was in good order—at that time in com-
45 plete order. Mr. Woodland paid me the above amount. I would suppose the boat was worth from three thousand to thirty-five hundred dollars at the time I did the work for her.

Cross-examined:

Mr. Woodland paid me fifty dollars in Sept., when he got the sails. Since (before the boat was lost,) he paid me one hundred dollars. I do not know positively whether he paid me any more. I do not know how much he owes me. I consider Mr. Woodland good for the amount due. I am not uneasy about it. The last time I saw the boat was some time before Christmas. I do not know how old the boat is. I am not a mariner. I have followed the water a little, but I am not well acquainted with it. I never went as a navigator. I don't know what sort of a bottom she had. I don't know her length. I don't know her breadth in her widest part, for I never measured her. I don't know her tonnage. I don't know her dead-rise, because I never measured the boat.

ROBERT McGEE.

Subscribed and sworn to before me this 7th day of May, 1870.

ISAAC BROOKS, JR.,
U. S. Comm'r.

46 *Deposition of Hanson P. Barnes, a witness for the appellants, taken before Robert Lyon Rogers, U. S. commissioner, at the city of Baltimore, the 18th day of November*, 1870.

My name is Hanson P. Barnes. My business is oyster and produce business. I have owned a good many boats in my time. I have had a good deal to do with ship-yards and repairing pungies. I am acquainted with matters relating to pungies. (The enrollments being placed in the hands of the witness, said enrollments being hereto annexed,) he is asked how many bushels of oysters would a pungy carry of the capacity mentioned *mentioned* in said enrollments. She will carry eight hundred bushels. She might carry more. If she had been kept in just common repair, a vessel of the kind described in the enrollments aforesaid would be worth from six to nine hundred dollars. Such a boat, built entirely new from her keel up, including sails and everything entirely new, of her dimensions, would be worth from eighteen hundred to two thousand dollars. The average wear and tear of a vessel ten years old that cost three thousand dollars, would be such that she would sell for two thousand dollars—I mean if she were kept in good repair in the meantime.

47 Cross-examined:

I know nothing of the "Seaman." I might have seen and might not.

HANSON P. BARNES.

Deposition of Herman Meyer, a witness for the appellants, taken before Robert Lyon Rogers, U. S. commissioner, at the city of Baltimore, on the eighteenth day of November, 1870.

My name is Herman Meyer. I kept a coal-yard. I own one schooner now, and have owned several before. I have had acquaintance with pungies and boats for the last twelve or fifteen years. I owned pungies myself, and sometimes went down the bay myself dredging for oysters. The enrollments annexed being placed in witnesses hand, and being asked how many bushels a vessel of her tonnage would carry, he says, "About nine hundred bushels of oysters." There is a difference now between the old and new system of tonnage. The tonnage now is bigger. When I say a vessel of nearly twenty-four tons would carry nine hundred bushels of oysters, I mean according to the new tonnage. The value of a vessel of that kind would depend upon the way in which she was kept, and whether there was a demand for such a
48 vessel. Her value would be, if entirely new, and everything complete, *would be* about three thousand dollars. I include sails and everything.

Cross-examined:

If I were to put nine hundred bushels on such a vessel, I could put on fifty additional bushels without much difference. I could not put 50 more in the hold. I could on the deck. Some oysters are a deal heavier than others. There is a difference in the capacity of vessels of the same custom-house measurement for carrying; some are flat and others are sharp. The flat carry more.

H. MAYER.

Deposition of Charles Preusch, a witness for the appellants, taken before Robert Lyon Rogers, U. S. commissioner, at the city of Baltimore, on the 18th day of November.

My name is Charles Treusch. I am engaged in the oyster and fruit-packing . I have been in the business for about eight years. I could not tell the value of oysters on the 20th January, 1870, without reference to my books. The annexed enrollments being placed in the hands of witness, he is asked how many bushels of oysters a ves-
49 sel would carry of the kind and capacity mentioned therein. He says, "About eight hundred bushels." The firm of which I was a member has owned as high as six or seven boats. I have been acquainted with pungies and boats for the last ten years—more particularly the last seven or eight years. The value of a boat of her age and capacity mentioned in said enrollment, if she were in good order, would be between six and nine hundred dollars. There is no rule to the average annual depreciation of a vessel. A vessel of the kind mentioned in the enrollments could not be built new for less than two thousand to twenty-five hundred dollars, including sails and everything complete.

Cross-examined:

About two years ago I had seven or eight vessels, and sold them all. I mean our firm at that time. I had no experience myself in loading the boats with oysters. I kept my boats especially for the oyster trade. I sent my men down, and they brought back the vessels loaded with oysters. A vessel of the description above would carry nine hundred and fifty bushels of oysters, if full loaded—choke full—and part loaded

on deck. I don't know, exactly, the tonnage of the vessels I
50 owned. I think I had one that measured thirty-five tons. They ranged from twelve to thirty-five tons; I am certain of these limits. One of them was, I think, about twenty-three tons. The value of a pungy depends upon condition, and wear and tear at time of sale. The value of a pungy depends, of course, upon the materials, and the care with which she is built. A person to give a correct estimate of the value of a vessel must see the vessel herself.

Re-examined:

When I spoke of a pungy being built for two thousand to twenty-five hundred dollars, I meant one of good materials, and sound in every respect. I never went down to the river to put the oysters in, but I received them at my wharf. I knew what number of bushels they brought. It was my business to receive them and to attend to them.

CHA'S TREUSCH.

Deposition of Andrew K. Shriver, a witness for the appellant, taken before Robert Lyon Rogers, U. S. commissioner, at the city of Baltimore, on the 3rd day of January, 1871.

I am a member of the firm of J. J. Shriver & Co., oyster and fruit packers, doing business at No. 90 West Falls avenue, in the city
51 of Baltimore, and have been in business five years and a half. We purchase about two hundred and fifty thousand bushels of oysters a year. In January, 1870, we purchased, on average, from fifteen hundred to twenty-two hundred bushels a day, commencing on the 10th day of January of that year. From the 19th to the 25th of January, 1870, we paid for oysters by the boat-load, from fifteen to twenty-five cents per bushel—averaging about twenty cents per bushel.

Being cross-examined by the attorney for the appellee, the witness makes oath, deposeth and saith as follows:

I cannot tell what was the highest price for oysters during the month of Jan'y, 1870, without referring to our books, but I am positive the highest price did not exceed thirty cents per bushel, and, I think, not twenty-five. I mean the highest price we gave.

Re-examined by attorney for appellant:

The oysters we bought were perfectly good and sound—we can use none others in our business.

A. K. SHRIVER.

52 Subscribed and sworn to before me this 3rd day of January, 1871.

ROB'T LYON ROGERS,
U. S. Commissioner.

Deposition of Joseph E. Brinkley, taken before counsel, by consent.

JOS. E. BRINKLEY, being duly sworn, deposes and says:

I reside at No. 569 Lexington street, Baltimore. I am oyster and fruit packer in Baltimore City. I have been in the business eight years. I am largely engaged in the business. I put up one hundred and twenty thousand bushels a year. I know Thomas J. Myers & Co.; they are engaged in the same business. I know of Mr. Farron; he is engaged in the raw-oyster business; i. e., he opens the oysters raw, and packs

them. I cook them before packing. The difference in price between the quality of oysters purchased by the raw men and those engaged in our business is about twenty or thirty cents per bushel. When the weather was cold both of the oysters rise in value, but those put up by the raw men rise higher. The highest men in our business give
53 for oysters is thirty cents; we cannot afford to give any more.

Cross-examination:

I am twenty-three years old. I have known Tho's J. Myers & Co. about four years.

J. E. BRINKLEY.

This deposition to be read and have the same effect as though taken before a U. S. commissioner.

WM S. WATERS,
For Appellee.
W. S. BRYAN,
For Appellant.

Deposition of Marcellus A. Mitchell, taken by consent of counsel.

MARCELLUS A. MITCHELL, being duly sworn, testifies and deposeth as follows:

I am a ship-broker. I negotiate the purchase and sale of ships. Have been an owner and builder of ships. I have been in the business for twenty-two years. I am acquainted with the value of ships, pungies, &c. A pungy, entirely new, of twenty-two tons register, would be worth twenty-four hundred dollars. If she were ten years, and had undergone ordinary wear and tear, she would be worth one thousand dollars. This would be full value.

54 Being cross-examined, he deposeth as follows:

Are there not some pungies built of the size you have indicated which would cost mor' than twenty-four hundred dollars?

I never saw a pungy of that size which cost more than twenty-four hundred *four hundred* dollars to build it, to the best of my knowledge.

How many pungies have you had built; what was their size, and when built?

One pungy, of eighty-five tons register, built at the close of 1864, in Dorchester County.

In your estimate of your cost for building pungies, do you include cost of rigging, sails, &c.?

I do. Every thing complete.

Have you had the supervision of building pungies, in any other instance than the one you have stated? If so, state them.

No, I have not.

Would not the value of a schooner, which had undergone wear and tear some time after she had been built, depend upon the manner in which she had been kept, and the manner in which she had been repaired from time to time?

The vessel would be worth more if well repaired and kept than if not repaired.

Re-direct examination:

55 I have been acquinted with value of vessel-property for twenty-two years. I have a knowledge of the cost of building

pungies in other instances than the one mentioned in my x-examination. I derived that knowledge from my brother-in-law, who has been a builder of pungies for the last four years, and I have frequently spoken with him in reference to their cost. I have also derived this knowledge from other persons with whom I have been thrown in the pursuit of my business. I have sold seventy-five or a hundred vessels in the pursuit of my business, or negotiated the same. My acquaintance with the selling price of pungies has been limited. My estimate of the value of pungies, in my direct examination, was based upon the value of two years ago. The' would be a little difference between the value now and two years ago. I' would be less now, but very trifling.

M. A. MITCHELL.

This deposition to be read and have the same effect as though taken before a United States commissioner.

W'M S. WATERS,
For Appellee.
W. S. BRYAN,
For Appellant.

56 *Admission.*

It is admitted that Jerry Slocum was sworn in the case before the district court, that he appeared to have his deposition taken, was then engaged in the fishery, and when he appeared the proctor of appellant was not in Baltimore. He was directed to appear again, but the apellee has not been able to get his testimony.

W. S. BRYAN,
For Appellant.
W'M S. WATERS,
For Appellee.

Agreement.

In the circuit court, U. S., for Maryland.

THE STEAMER COMMERCE }
vs. }
JOHN A. M. WOODLAND. }

It is agreed that the copies of the enrollments and bill of sale may be filed to have the same effect in evidence as if filed before a commissioner, subject to all just exceptions.

W'M S. WATERS,
Proctor for Appellee.
W'M SHEPARD BRYAN,
Proctor for Appellant.

57 *Enrollments.*

Permanent. Form C. Enrollment, No. 36.

Enrollment in conformity to an act of the Congress of the United States of America, entitled, "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

William Todd, of Dorchester County, State of Maryland, having taken or subscribed the oath required by the said acts, and having sworn that he is a citizen of the United States, sole owner of the ship or vessel called the "Seaman," of Crisfield, whereof William Todd is at present master, and he hath sworn is a citizen of the United States, and that the said ship or vessel was built in the county and State aforesaid in the year 1852, as per enrollment No. 12, issued at the port of Deal's Island, May 15th, 1866, now surrendered, district changed. And said enrollment having certified that the said ship or vessel has one deck
58 and two masts, and that her length is forty-nine (49) $\frac{9}{10}$ feet; her breadth, seventeen (17) $\frac{5}{10}$ feet; her depth, five (5) $\frac{5}{10}$ feet; her height $\frac{}{10}$ feet; that she measures twenty-three (23) and $\frac{93}{100}$ tons, viz:

	Tons.	100ths
Capacity under tonnage deck	22	87
Capacity between decks above tonnage deck		
Capacity of inclosures on the upper deck, viz:	1	06
Total tonnage	23	93

and that she is a schooner, has no gallions and a billet-head.

And the said owner having agreed to the description and admeasurement above specified, and sufficient security having been given accordin' to the said acts, the said schooner has been duly enrolled at the port of Crisfield, eastern district of Maryland.

Given under my hand an' seal at the port of Crisfield, this 4th day of June, in the year one thousand eight hundred and sixty-seven, (1867.)

[SEAL] H. LAWSON, *Coll.*

59 Permanent. Form C. Official No. 22,412. Enrollment No. 94.

Enrollment in conformity to an act of the Congress of the United States of America, entitled, "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to reglate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

John A. M. Woodland, of Dorchester County, M'd, having taken or subscribed the oath required by the said acts, and having sworn that he, the said John A. M. Woodland, is a citizen of the United States, sole owner of the ship or vessel called "Seaman," of Crisfield, whereof John A. M. Woodland is at present master, and as he hath sworn is a citizen of the United States, and that the said ship or vessel was built at Dorchester Co., in the State of Maryland, in the year 1852, as appears by certificate of enrollment No. 36, dated and issued at the port of Crisfield, June 4th, 1867, now surrendered, property changed. And said enrollment having certified that the said ship or vessel has one deck and
60 two masts, and that her length is $49\frac{9}{10}$ feet; her breadth, $17\frac{5}{10}$ feet; her depth, $5\frac{5}{10}$ feet; her height, $\frac{}{10}$ feet; that she measures twenty-three (23) and $\frac{93}{100}$ tons, viz:

	Tons.	100ths.
Capacity under tonnage deck	22	87
Capacity between decks, above tonnage deck		
Capacity of inclosures on upper deck, viz	1	06
Total tonnage	23	93

and that she is a schooner, has no gallions and billet-head.

And the said John A. M. Woodland having agreed to the description and admeasurement above specified, and sufficient security having been given, according to the said acts, the said sch'r has been duly enrolled at the port of Crisfield, Md.

Given under my hand and seal at the port of Crisfield, this 16th day of September, in the year one thousand eight hundred and sixty-nine.

[SEAL.] H. LAWSON,
Coll. of Customs.

61 *Bill of sale.*

Know all men by these presents, that I, William Todd, of Dorchester County, in the State of Maryland, sole owner of the schooner or vessel called the Seaman, of Crisfield, eastern district of Maryland, for and in consideration of the sum of two thousand dollars to me in hand paid at the time of the perfection of these presents by Jno. A. M. Woodland, of the county and State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained and sold, assigned, transferred and set over, and by these presents do grant, bargain, sell assign, transfer, and set over unto the said John A. M. Woodland, his executors, administrators, and assigns, all of the said schooner or vessel, called the Seaman, of Crisfield, together with all and singular her masts, yards, sails, rigging, anchors, cables, boat, tackel, apparel and appurtenances, as she now is, and is more particularly described in a certificate of enrollment granted her at the port of Crisfield, Md., in the following words:

Enrollment in conformity to an act of the Congress of the United States of America, entitled "An act for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for
62 regulating the same," approved Feb. 18, 1793, and of an act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864."

William Todd, of the county and State aforesaid, having taken and subscribed the oath required by said act, and having sworn that he is a citizen of the United States, sole owner of the ship or vessel called the Seaman, of Crisfield, Md., whereof James F. Todd is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built in Dorchester County, in the year 1852, as per enrollment No. 12, issued at the port of Deal's Island, on the 15th day of May, in the year 1866, now surrendered, district and property changed, and said enrollment having certified that the said vessel has one deck and two masts, and that her length is $49\frac{9}{10}$ f't, her breadth $17\frac{5}{10}$, her depth $5\frac{5}{10}$, that she measures $23\frac{93}{100}$ tons.

Capacity under tonnage deck	22 87
" of enclosures on upper deck	1 06
Total tonnage	23 93

and that she is a schooner; has a square stern, no galleries, a billet-head.

And the said W'm Todd having agreed to the description and admeasurement above specified, and sufficient security having been
63 given according to the said acts, the said sch'r or vessel Seaman has been duly enrolled at the port of Crisfield.

Given under my hand at the port of Crisfield.

To have and to hold the said schooner Seaman, of Crisfield, and the

appurtenances thereto belonging, upon the said schooner, unto the said John A. M. Woodland, his executors, administrators, and assigns to the only proper use and behoof, and as the proper goods and chattels of the said John A. M. Woodland, his executors, administrators, and assigns, from henceforth forever, and I, the said William Todd, for myself, my executors, and administrators, do hereby covenant and agree to and with the said John A. M. Woodland, his executors, administrators, and assigns, that, at the execution of these presents, I am the true and lawful owner of the said schooner called the Seaman, of Crisfield, and appurtenances, and I have full right and authority to sell and dispose of the same freed from and cleaned of all claims, incumbrances, or demands whatever.

In witness whereof I have hereunto set my hand and seal the 15th day of Sept., in the year of our Lord one thousand eight hundred and sixty-nine.

WILLIAM his + mark. TODD. [SEAL.]

64 Signed, sealed, and delivered in presence of—
JOHN TYLER.
JNO. T. MATTHEWS.

[U. S. int. rev. stamp, $2.00.]

STATE OF MARYLAND,
Dorchester County, to wit:

I hereby certify that, on this 15th day of September, in the year 1869, before me, a justice of the peace of the said State, in and for the *the* aforesaid co., personally appeared William Todd, and acknowledged the within bill of sale to be his act and deed, and at the same time appeared John A. M. Woodland, and made oath that it was a fair and bona-fide sale or transaction.

Acknowledged and sworn to before—

JOHN TYLER, *J. P.*

CUSTOM-HOUSE,
Crisfield, Md., March 31st, 1870.

I hereby certify that the above is a correct copy of the bill of sale, filed in this office, Sept. 16, 1869, and recorded page 113, liber. H. L., No. 2.

[SEAL.] W. T. LAWSON, *Deputy Coll.*

65 And afterwards, to wit, on the 5th day of January, 1871, the circuit court here made and passed the following decree, to wit:

Decree.

In the circuit court of the United States, 4th circuit, district of Maryland.

STEAMER COMMERCE. *vs.* JOHN A. M. WOODLAND. } Appeal from district court of Maryland. In admiralty.

This cause being ready for hearing and having been argued by counsel and carefully considered, it is, thereupon, this fifth day of January, A.

D. 1871, adjudged, ordered, and decreed, that the decree of the said district court be, and the same is hereby, affirmed with costs.

HUGH L. BOND.

From which decree, so as aforesaid passed, the said claimant of the said Steamer Commerce and the said stipulators, by their proctor aforesaid, in open court here, have prayed an appeal to the Supreme Court of the United States, to be held at the city of Washington on the first Monday in December next; and to them it is granted.

66 *Appeal bond.*

Know all men by these presents that we, James S. Whedbee and John S. Dickinson, of the city of Baltimore, and State of Maryland, are held and firmly bound unto John A. M. Woodland, in the just and full sum of seven thousand dollars, lawful money of the United States, to be paid to the said John A. M. Woodland, his certain attorney, heirs, executors, administrators, or assigns, to which payment, well and truly to made and done, we hereby bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated this day of January, in the year of our Lord, one thousand eight hundred and seventy-one.

Whereas, at a district court of the United States, in and for the Maryland district, begun and held in the city of Baltimore, on the first Tuesday in March, in the year of our Lord one thousand eight hundred and seventy, the said John A. M. Woodland, by decree of the same court recovered against the Steamer Commerce for his damages by him sustained as in his said libel is set forth, as fully appears in said decree, which was to be paid by the stipulators for said steamer, together with his costs and charges in that behalf laid out and expended, from

67 which said decree, so as aforesaid passed, the claimants of said Steamer Commerce prayed an appeal to the circuit court of the United States, for the fourth circuit in and for the Maryland district, to be held at the city of Baltimore, on the first Monday in November then next;

And whereas, also, at a circuit court of the United States, for the fourth circuit, in and for the Maryland district, begun and held at the city of Baltimore on the first Monday in November, in the year of our Lord one thousand eight hundred and seventy, by the decree of the same court the said decree of the district court aforesaid was affirmed with costs. From which said decree, so as aforesaid passed, the claimants of the steamer Commerce have prayed an appeal to the Supreme Court of the United States to be held at the city of Washington on the first Monday in December next:

Now, the condition of the foregoing obligation is such, that if the said claimants of the Steamer Commerce shall well and truly prosecute with effect their said appeal and pay unto the said John A. M. Woodland, his heirs, executors, administrators, or assigns, the amount of said decree, costs, and charges aforesaid of the said district and

68 circuit courts aforesaid, and all such damages, costs, and charges as may be awarded unto him by the said Supreme Court in case the said appellants shall fail to make good said appeal, then the above obligation to be void and of none effect; otherwise to be and remain in full force and virtue in law.

JA'S S. WHEDBEE. [SEAL.]
JNO. S. DICKINSON. [SEAL.]

Signed, sealed, and delivered in presence of—
S. A. LAWSON.

The penalty of this bond is more than double the amount of the decree. I know the bondsmen well and believe that each of them is worth much more than double the penalty.

W. S. BRYAN.

JAN'Y 13TH, '71.

Thereupon it is ordered, by the court here, that the record and proceedings aforesaid with all things concerning the same, be transmitted to the said Supreme Court; and the same is tramsmitted accordingly.

69 In testimony that the foregoing is a true transcript of the record and proceedings in the cause aforesaid, in the circuit court of the United States for the fourth circuit and district of Maryland, I have hereunto subscribed my name and affixed the seal of the said circuit court this 15th day of November, A. D. 1871.

[SEAL.] JAMES W. CHEW,
Clerk Circuit Court.

(Indorsement on cover:) No. 454. The Steamer Commerce, Wilson Walker, master & claimant, appellant, vs. John A. M. Woodland. Maryland C. C. U. S. Filed 1st December, 1871.

SUPREME COURT OF UNITED STATES.

STEAMER COMMERCE,

vs.

J. A. M. WOODLAND.

BRIEF FOR APPELLANT.

John A. M. Woodland filed a libel in the District Court for Maryland against the Steamer Commerce.

It alleged that the libellant was the owner of the Schooner Seaman, a vessel of about twenty-four tons burthen ; that the said schooner being laden with a valuable cargo of oysters, was proceeding up the Chesapeake Bay, bound to the port of Baltimore ; that the steamer Commerce was proceeding down the Bay in a direction opposite the schooner, and in a course parallel, or nearly so to that of the schooner ; that the steamer ran into the schooner on her port side and sunk her and her cargo and furniture, in water more than seventy feet deep, and that the whole became a total loss. That the collision was caused solely by the negligence of those on board the steamer. That the schooner was worth thirty-five hundred dollars ; that the cargo consisted of nine hundred and fifty bushels of oysters, worth a thousand dollars ; that four hundred dollars in money, and the clothes of the crew and the furniture of the boat, worth a hundred dollars were also lost.

The answer of Wilson Walker, the master of the steamboat, stated that he knew nothing about the ownership of the

schooner, or her cargo, &c., &c. That the steamboat was proceeding down the Chesapeake Bay at a rate of six or seven miles an hour, holding a course south by west; that he discovered a sailing vessel approaching from the opposite direction, holding a course as near as he could judge, north by east; that a light wind was prevailing from the south-east, of about two knots an hour; that when the schooner was about a mile distant, he altered the course of the steamer to south by east; that he continued this last mentioned course, and the schooner continued her original course until the vessels were within about four hundred yards of each other, when the schooner changed her course so as to cross the bow of the steamer; that he then caused the engines of the steamer to be stopped and reversed; that within about five minutes afterwards the collision took place; that if the schooner had not altered her course the collision would not have taken place, and that it was owing to the fault of the persons having charge of the navigation of the schooner.

The persons claiming the money, the oysters and the clothing filed a petition praying that their value should be awarded to the libellant for them.

The decree of the District Court condemned the steamer for all the damages, and put the value of the schooner at twenty-five hundred dollars, the value of the oysters at three hundred and eighty dollars, and allowed other sums for the money and clothing, &c., alleged to have been lost, (Record, page 12.) On appeal to the Circuit Court the decree was affirmed. (Rec. pages 25 & 26.)

SECOND. ERRORS ALLEGED.

The libel ought to have been dismissed.

The damages allowed were too great, supposing the decree to be correct in other respects.

THIRD. POINTS.

1st. The damages are too great.

The enrollment (page 23,) and the bill of sale (page 24,) shew that the schooner was built in 1852, and was therefore

about eighteen years old when she was lost. The price stated to have been paid was two thousand dollars, (Woodland's testimony, page 14, and bill of sale,) and he paid for some repairs, (McGee's testimony, page 18.)

Barnes, (page 18,) Treusch, (page 19,) and Mitchell (page 21,, put the value of a vessel like that one lost in this case, much lower. The value of the schooner given in the decree would be very large if she were entirely new ; but it is excessive for such a vessel eighteen years old.

The libellant, (page 14,) Matthews, (page 15,) Bramble, (page 16,) McGee, (page 18,) all make an extravagant valuation, but each of them, on cross-examination, shows that he knew very little about her. None of them knew the age of the boat, her length, her bredth, her depth, or her dead-rise. The real value was probably not far from one thousand dollars.

The quantity of the oysters is estimated at nine hundred and fifty bushels, and the price at forty cents a bushel.

According to Barnes (page 18,) and Treusch, (page 19,) the estimate of the number of bushels is too high.

Shriver's testimony shows that at the time of the collision he was buying immense quantities at from fifteen to twenty-five cents a bushel. There is no evidence, whatever, to sustain the amount allowed to Slocum.

2d. The libel ought to have been dismissed.

The testimony of Walker, (pages 7–9,) Brabble, (pages 9–10,) Hardester, (pages 10–11,) shows that the steamer was not in fault.

And it is agreed that William Gray, the lookout, would have testified to the same facts as Walker, (page 11,) and that his evidence shall be considered as in the case.

It is admitted on all sides that the steamer and schooner were approaching from opposite directions, and in courses parallel or nearly parallel to each other, (libel, page 2,) (answer page 4,) (Walker, page 7,) (Brabble, page 9,) (Gray, page 11.) It is shown by the same witness, and by Hardester, (page 11,) that the steamer was well manned and equipped, and that the engines were in good order ; by Walker, Brabble and Gray, that a vigilant lookout was kept up in the best position for a

person to see approaching objects; that the schooner was observed in due time, and the course of the steamer altered from south by west to south by east, two full points; and that this change of course would have cleared the schooner if she had not also altered her course, (pages 7, 8, 9, 10, 11.)

It would have been a physical impossibility to bring the vessels together if the schooner had not changed her course. Without this change on the part of the schooner the steamer would have passed safely on her starboard, instead of striking her on her port side. And there is the direct evidence of one of the libellant's witnesses that the change was made. Thurlow (pages 6 & 7,) states that when he first saw the vessels the steamer was steering east, south-east, and the schooner, north, north-east, a very decided change from what are acknowledged to have been their courses when they came in sight of each other. Thurlow is the only witness not connected with either of the vessels, who testifies on this point.

Woodland (the captain,) (page 13,) and Bramble (page 16,) state that *after they saw the steamer* neither vessel altered her course.

The only mode of reconciling this statement with the well established facts of the case is to suppose that from the carelessness of their lookout they did not observe the steamer until after both vessels had changed their courses. Bramble (the lookout,) shews in his own testimony that he did not do his duty. He left his position and went aft to look at the compass "*every two or three minutes,*" instead of keeping up a vigilant and unremitting watch, (page 17.) (If there was no change of course why was he constantly looking at the compass?) The captain (Woodland,) was totally inexperienced and incompetent. He says he had command of the schooner from October, 1869, and that he never sailed on board a boat until that time, (page 14.) The collision took place in January, 1870. And he could not tell in what direction from him the steamer was when he first saw her. Neither did he know the burthen of his own vessel, or any of her dimensions, (page 14.) Bramble was equally ignorant, (page 17.)

No effort, whatever, was made to raise the schooner. The Baltimore, 8 Wallace, 377. But all concerned appear to have regarded the collision as a favorable opportunity for selling schooner, cargo, clothes and furniture at an exaggerated price, and also to get four hundred dollars, which Bramble calls "*a mere trifle.*"

WM. SHEPARD BRYAN,
For Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 217.

STEAMER COMMERCE

vs.

WOODLAND.

Appellant's Brief on the Motion to Dismiss the Appeal.

The decree (page 11,) directed, that twenty-five hundred dollars should be paid to the libellant on his account; that three hundred and eighty dollars should be paid to the libellants, Bramble and Matthews, and that the other sums mentioned in the decree should be paid to the libellant for the use of the persons named, according to the prayer of their petition. This petition is onpage 5.

The libellant properly sued for the whole damage, and every dollar of the damages is awarded to him either alone or jointly with other persons; he, of course, receiving a portion for the use of other persons.

The whole controversy was properly carried on with him.

Propeller Commerce, 1 Black, 582.
Commander in Chief, 1 Wallace, 43.

And the question was whether the appellant should pay him the whole amount of the damage.

This amount was more than two thousand dollars. The right of appeal under such circumstances is settled.

Shields vs. Thomas, 17 Howard, 3.

WM. SHEPARD BRYAN,
For Appellant.

SUPREME COURT OF THE UNITED STATES.

STEAMER COMMERCE, WALKER, CLAIMANT,

vs.

JOHN A. M. WOODLAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

BRIEF OF APPELLEE.

The libel was filed in this case in the District Court for the District of Maryland by the appellee, against the Steamer Commerce, to recover damages for the total loss of the Schooner Seaman and cargo, in consequence of a collision with said steamer.

The decision of the District Court was in favor of the appellees, and this decree was affirmed by the Circuit Court, and an appeal has been taken to this Court by the appellants.

The libel states that the collision occurred on the 19th day of January, 1870, about 10 P. M., about the middle of the Chesapeake bay, opposite Annapolis. That the Seaman was proceeding up the Bay. The night clear and the moon shining. That it was perfectly calm, so that the Seaman was incapable of changing her course or moving in any direction, and no effort on her part was made to do so. That she saw the Commerce

proceeding in a course toward her, involving a risk of collision, when she was two miles off. That the steamer never changed her course or took any precaution to avoid the Seaman, and proceeded directly down upon her, and struck her on her port side, cutting her into the foremast, and causing her immediately to sink in seventy feet water, so that she and her cargo became a total loss, (Record page 2.)

The answer states that the steamer was proceeding down the bay at a speed of six or seven miles an hour. That she discovered the Seaman approaching from an opposite direction. That when she was a mile off, the steamer altered her course to south by east. That she continued this course, and but for the change of course on the part of the schooner, when they were four hundred yards apart, the vessels would have passed in safety. When this change was observed the steamer stopped and reversed her engines, and in about five minutes after the engines were reversed the collision occurred, (Record, page 5.)

The appellees show by the deposition of Thurlow (Record, page 6,) that he was an eye witness of the whole scene, occupying a position from which he could accurately see all that took place. The night was perfectly calm, not a particle of wind, and not a ripple on the water. That he saw the two vessels for five minutes before the collision, and up to the time of the collision. Neither vessel in that time changed her course, and the steamer did not abate her speed.

The captain of the Seaman, Woodland, (Record, page 13,) fully sustains the testimony of Thurlow. He says that the steamer was warned a half mile off that she would be into the schooner unless she changed her course. The schooner was becalmed and could not change her course or get out of the way of the steamer.

Bramble (Record, 15, 16, 17,) confirms the statement of these witnesses, and says it was so calm that if the schooner went any way it was backward, the pretence therefore that there was any change of course on the part of the schooner is absurd. Such change was impossible.

The burden of proof under these circumstances was upon the steamer to show that she had observed every precaution to prevent the collision. The testimony of Walker, the captain of

the Commerce; of Brabble, the helmsman; and of Hardester, the engineer of the Commerce, is in the Record, (Record, pages 7, 9 and 10.) It was also agreed that Gray, the lookout, would have testified to the same facts as those stated by Walker if he had been sworn, (Record, page 11.)

The evidence of these witnesses, if true, in every particular, so far from exculpating the steamer, proves that she did not observe the proper precaution to prevent a collision.

1st. The lookout was not in proper position to do his duty effectively. He was stationed on a narrow passway, two (2) feet wide, just in front of the wheelhouse, twenty-five feet from the bow of the boat, and at a considerable elevation from the deck. This is not the position for a lookout. But independently of this, there was a mast or derick four or five feet in front of him, with rigging attached to it, (Record 10, deposition of Brabble.)

This obstruction might readily obscure one of the lights of the schooner, and make the impression that she had changed her course, when she had done no such thing.

Walker, captain of the Commerce, [Record, page 7,] states that the steamer was proceeding down the bay south by west, and when she saw the schooner two miles off, her course was changed to south by east, and by this movement the port light of the schooner was shut out. That if both vessels had proceeded on their course there would have been no collision; but, that the schooner, when 400 yards off, ran under the bows of the steamer. Aside from the impossibility of such movement of the schooner, why was there no observation made by the Seaman between the time she was first seen at the distance of two miles off, and when she was 400 yards off. This must have arisen from the failure of the lookout. The schooner without her lights could have been seen one mile off.

2d. When the steamer was 400 yards off, and, as alleged by Walker, within five minutes before the collision, no effort is made on the steamer to change her course, so as to get out of the way of the schooner.

3d. There was no effort to observe the 15th Article of the Sailing Regulations.

4th. The effort to observe the 16th Article was too late, and either from defect of the machinery of the steamer or the want of proper skill in her officers, was ineffective.

There was a total loss of vessel and cargo. Thurlow and Bramble say the Seaman could not be found, and the fact that she sunk in more than seventy feet water is sufficient to show that the loss was total.

WM. S. WATERS,
Attorney for Appellee.

SUPREME COURT OF THE UNITED STATES.

STEAMER COMMERCE, WALKER, CLAIMANT,

vs.

WOODLAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MARYLAND.

Supplemental Brief of Appellees.

Not supposing that the appellant would seek to revise the decision of the Court below upon the amount of the damages, the appellee included nothing in his brief on this question. He now files in response to the brief of appellant the following:

1st. The value of the vessel as found by the Court below is moderate, and is rather under than over the true estimate.

The owner, Woodland, (Record 14,) says she was worth $3,000. He bought her a few months before that for $2,000, and since that time expended in repairing her near $1,000. To him, then, the actual loss was greater than that given.

Matthews, (Record 15,) values her at $3,500. McGee, (Record 18,) values her at from $3,000 to $3,500. Myers, witness for appellant, (Record 19,) would think her worth $3,000.

These are all the witnesses that had seen her. The testimony of the others is speculative.

2d. The amount and value of the oysters are clearly proven. They are fixed by the Court at $380. The oysters are shown to be of the best quality.—(Matthews, Record 15.) There were about 900 bushels on board.—(Bramble, Record 15.) Oysters vary in the market from 25 cents to 60 cents per bushel. These were proven to be the best, and the damages fixed by the Court for the loss is under the proper estimate.

3d. The appellees will ask the Court in consequence of the delay and the vexatious character of the appeal, (the case being clear upon the facts,) to give them an amount of interest upon the decree that will *compensate* them for the delay.

MOTION TO DISMISS THE APPEAL AS TO ALL PARTIES EXCEPT WOODLAND, THE OWNER OF THE VESSEL.

The Court below in their decree award to Woodland, the owner of the vessel, for the use of the other parties, damages for the said losses all under $2,000.—(See decree, Record 12.) From this decision there is no appeal to this Court.

Rich vs. Lambert, 12 Howard, 353.
Oliver vs. Alexander, 6 Pet., 144.
Stratton vs. Jarvis & Brown, 8 Pet., 5.
Spear vs. Plain, 11 How., 522.
Shields vs. Thomas, 17 How., 3.

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